*** THE HON'BLE SRI JUSTICE B. PRAKASH RAO**
AND
*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 22221 OF 2002

% 08.12. 2006

Ch. Purushotham.

….. Petitioner

Vs.

$ The Senior Divisional Commercial Manager, S.C. Railway, Vijayawada and others.

…..Respondents

! Counsel for the petitioner: Sri Shiva

^ Standing Counsel for respondents: Sri R.S. Murthy

< Gist:

>Head Note

?

[1] AIR 1998 SC 3038
2 (1999)8 SCC 582
3 (2001) 5 ALD 406
4 2006 WCC (L&S) 840
5 (2006) 6 SCC 794
6 1996(4)ALD 749
7 AIR 1970 SC 1255
8 1993(4) SCC 727
9 1996(3) SCC 364
10 AIR 1965 SC 155
11 AIR 1984 SC 289
12 1969 (3) SCC 372
13 AIR 1974 SC 696
14 1977(2) SCC 491
15 AIR 1982 SC 673
16 AIR 1974 SC 1596
17 1966 MPLJ 26
18 AIR 1969 NSC 186
19 AIR 1976 SC 2547
20 AIR 1989 SC 1933
21 2002(4) SCC 234
22 1985(2) APLJ Short notes page 13 (judgment in W.A.909 of 1982 dated 18.12.1984)
23 (2005) 3 SCC 241
24 AIR 1963 SC 779
26 AIR 1969 SC 966
27 AIR 1989 SC 1854
28 AIR 1966 SC 1827
29 1990(4) SCC 594
30 1991(2) SCC 716

[31] 1994 Suppl.(2) SCC 468
[32] 1977(1) SCC 472

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 22221 OF 2002

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Central Administrative Tribunal, in O.A. No. 1888 of 1999 dated 20.07.2001 and R.A. No. 68 of 2001 dated 16.10.2001, Sri Ch. Purushotham, erstwhile Train Conductor Guard, South Central Railway, Vijayawada has preferred this writ petition.

The petitioner joined as a Ticket Collector on 10.05.1976. He was initially promoted as a Senior Ticket Collector in 1979, thereafter as a Travelling Ticket Examiner in 1982, and as

a Head Travelling Ticket Inspector in 1995. During the period when he was discharging the duties of a Travelling Ticket Inspector in the A/c chair cars of Train No. 7245 Ratnachal Express, running between Visakhapatnam and Vijayawada, he was issued charge memo dated 18.03.1997, containing two articles of charge.

"**Article-I**

That the said Sri Ch. Purushottam, TCG/BZA while working as such during the month of November, 1996 committed serious misconduct in that by Train No. 7245 express on 26.11.95, while manning AC Chair Car between VSKP and BZA, he allowed 7 passengers holding II/M/E tickets in the AC Chair Car without collecting Railway dues till the time of vigilance check, with an intention to collect the same at the destination from the passengers for misappropriating the amount for himself, thus causing loss of revenue to the Railway as detailed in the statement of imputations.

Sri Ch. Purushottam, TCG/BZA violated instructions laid own in para 522 of IREM Vol. I

Sri Ch. Purushottam, TCG/BZA thus failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant and violated Rules 3(1), (i) and (iii) and Rule 26 of Railway Services (Conduct) Rules, 1966.

Article II

He did not declare his private cash in the EFT Book. He also mixed up his private cash with Railway cash with an intention to cover up his illegal earnings and at a later stage to avoid his illegal earnings from being detected.

Sri Ch. Purushottam TCG/BZA violated instructions laid down in CCM/SC letter No. C.569/TC/VI/EFT/Vol. III dated 01.08.1995 and C.569/TC/VII/EFT/ Vol. IV dated d24.01.1996.

Sri Ch. Purushottam TCG/BZA thus failed to maintain devotion to duty and violated Rule 3(1) (ii) and Rule 26 of Railway Services (Conduct) Rules, 1966."

Sri K. Altaf Hussain, the Inspector who conducted the vigilance check in Train No. 7245 on 26.11.1996, was among the listed witnesses. The petitioner submitted his explanation to the charge memo on 20.10.1997 denying the charges. An enquiry officer was appointed. In the enquiry, the petitioner was defended by Sri P. Charles S. Rao his defence representative.

The Enquiry Officer, in his report, noted that the petitioner had submitted his explanation, to the charge memo dated 18.03.1997, on 20.10.1997, that he did not put forth any defence during the enquiry, (either oral or in the form of a statement), that he did not submit his defence brief despite being given an opportunity by the enquiry officer to do so, and that he had categorically refused to answer any one of the enquiry officer's questions during general examination. The Enquiry Officer held that no defence was highlighted by the petitioner during or after completion of the enquiry and as such he was constrained to discuss the evidence based on the available documents/oral evidence on record.

The enquiry officer noted that the prosecution witness Sri K. Altaf Hussain, (the Vigilance Inspector), had informed that, on 26.11.1996, he had drawn the cash proceedings, recorded the statements of two passengers and had seized the reservation chart of the A.C. Chair Car Coach No. 7078 of 7245 Ratnachal Express. The enquiry officer also noted that, after closure of the case from the D.A. side, the petitioner had requested the enquiry officer to permit him to introduce the two passengers as his defence witnesses on the plea that he was not in a position to defend himself against the charge without these defence witnesses and that his request had been agreed to subject to the condition that it was his responsibility to present them. While holding that it was not mandatory on the part of the administration to provide passes for the journey of the defence witnesses, the enquiry officer directed that the

defence witnesses be provided with passes, so that the petitioner had a more reasonable opportunity of defending himself. The enquiry officer noted that the petitioner had failed to produce these witnesses during the enquiry and his contention that discrimination was shown between the witnesses had been clarified and he was advised to inform whether there were any more defence documents or witnesses which he wished to submit. The enquiry officer noted that the petitioner had not examined himself as a witness, that he did not give his defence statement and that he did not answer any of the questions put to him by the enquiry officer in the general examination. The enquiry officer noted that the defence counsel had prompted and restrained the petitioner, did not allow him to answer the questions and had instructed him not to give answers to any of the questions and it was in such circumstances that the enquiry officer was constrained to conclude the enquiry. Even thereafter, the petitioner had informed that there would not be any defence statement in the absence of his being provided an opportunity to present his version by examining the defence witnesses.

On analysis of the evidence on record, in respect of the first charge, the enquiry officer noted that the statement of the passengers were recorded to the knowledge of the petitioner and necessary certification to that effect had been made by him in Ex.P-2 and 3 and that these two exhibits were self-explanatory. The enquiry officer held that the reasons for non-production of the witnesses in the enquiry were to the knowledge of the petitioner himself as it was his responsibility to produce his defence witnesses and it was subject to the condition that he would take the responsibility of producing them that production of the defence witnesses had been agreed to.

The enquiry officer noted that Sri P. A. Srinivasa Rao, in his statement marked as Ex.P-2, had stated that he was holding a Second Class ticket from Visakhapatnam to Tadepalligudem, that he had informed the TTE that he would be traveling in the a/c coach and by the time he went to the bath room and came back, the TTE had come, checked the Coach and had gone away. He stated that subsequently the vigilance check took place and thereafter the TTE had collected Rs.133/- from him and had tendered a receipt. Sri D.G. Srinivasa Raju, the other passenger from Simhachalam, stated that four adults had got into the a/c coach at Visakhapatnam, that they did not pay any amount to the TTE before the vigilance check, that their tickets were from Visakhapatnam to Rajahmundry, that their second class tickets had been given to the TTE at Annavaram and that, after the vigilance check, the TTE had collected Rs.484/- from them and had issued a receipt. The enquiry officer placed reliance on Ex.P-4 to hold that there were a large number of vacancies in the a/c coach and that as per the chart very few passengers were traveling therein. The enquiry officer noted that the allegation levelled against the petitioner was that he had allowed seven passengers holding second class tickets to sit in the a/c chair car without collecting railway dues till the time of vigilance check with the intention of collecting the amount from the passengers, at their destination, in order to misappropriate the amounts for himself. The enquiry officer held that, as per Ex.P-2 and P3, it was established that the tickets were in possession of the TTE right from Annavaram and though Sri P.A. Srinivasa Rao had stated

that he had gone to the bath room, and before he could come back the TTE had checked and gone away, no passenger, even if he went to the toilet, would wait there for two hours which was the journey time from Visakhpatnam to Annavaram. The enquiry officer noted that as there was not much rush in the compartment, even after the passenger had come back from toilet, the petitioner could have realized the differential amount from him which was his primary responsibility as the TTE.

With regards the statement of Sri D.G. Srinivasa Raju, the enquiry officer noted that though the tickets were taken from him at Annavaram, the dues were not realized by the petitioner till the vigilance check and, in view of the small number of passengers available in the coach, the amounts should have been realized within a reasonable time. The enquiry officer held that failure on the part of the petitioner to realize the dues was with malafide intentions as the passengers had also stated that, though they had informed and boarded the train, the petitioner did not collect any money until the vigilance check. The enquiry officer noted that both the coaches 7078 and 7183, manned by the petitioner, had a connecting vestibule and that it was not impossible for the petitioner to realise the amount if he intended to do so. The enquiry officer held that the reasoning put forth by the petitioner, vide question no. 18, that the passengers traveling in his coach had started an argument with the pantry car staff, had demanded eatables and had threatened to pull the chain, and he was therefore required to stop his check and pacify them for a long time before the vigilance inspector went into the coach, was not based on any evidence. The enquiry officer noted that, in answer to the said question, the vigilance inspector had stated that no such incident was reported to him on the day of the check either by the petitioner or by the passengers. The enquiry officer held that the petitioner's contention was not based on evidence and could not be accepted. The enquiry officer held the first charge as established.

With regards the second charge, the enquiry officer on noting that the petitioner, in Ex.P-1, had admitted that he had mixed up the railway cash and private cash, held that the petitioner had left no scope for the checking authorities to ascertain as to the amount of private cash and the amount which constituted railway cash and that one could not be sure whether the petitioner, though he had declared the private cash, had got the amount physically as to that extent the amount could be inflated by other means. The enquiry officer rejected the petitioner's contention that the instructions mentioned in the circular were not notified to him individually and held that the procedure, in cases where such instructions were not individually communicated, was that it would be displayed on the notice board and that it was in the petitioner's interest to ensure that the circulars were followed. The enquiry officer referred to Rule 26 of the Railway Services (Conduct) Rules, 1966, which provides that, notwithstanding anything contained in the rules, a railway servant shall be governed by the administrative instructions, that may be issued from time to time, with regards their conduct, and held that it was incumbent on the petitioner to make himself aware of such instructions. The Enquiry Officer held the second charge also to have been established.

The disciplinary authority, in his memo dated 25.11.1999, after careful consideration of

the enquiry report and the representation dated 09.12.1998 submitted by the petitioner in reply thereto, agreed with the findings of the enquiry officer and held that the articles of charge were established. The disciplinary authority, in his order, noted the facts and circumstances relating to the case as under:-

1. The train left Visakhapatnam at 13.00 hrs as stated by the charged employee.
2. The Vigilance Inspector entrained at Annavaram station and started the check i.e., nearly two hours after the train left Visakhapatnam.
3. The train had only one halt between Visakhapatnam and Annavaram i.e, at Anakapalli.
4. Mr. G. Srinivasa Raju, one of the two passengers who gave the statement, stated that all four of his party had entrained at Visakhapatnam.
5. The other passenger Sri P.A. Srinivasa Rao stated that he had told the TTE that he was travelling by AC Chair Car. Though he had not mention where he entrained, it could be reasonably assumed that he entrained at Visakhapatnam or at Anakapalle.
6. The Charged Employee, in his report of the Vigilance Inspection check, has stated that "I have also produced four II Express tickets."
7. The charged employee was incharge of the two AC Chair Car coaches only.
8. The computer charts for the two coaches showed one coach as fully vacant and the other coach with passenger. According to the Vigilance Inspector there were passengers sitting in both the coaches and there were only 15 passengers in the AC coach in which the check was conducted.
9. The Charged Employee stated that he had mixed up his private and railway cash.
10. Prior to the vigilance check only 6 extra-fare tickets were issued i.e., from Nos.966356 to 966361 for six passengers.
11. There were 15 confirmed names in the chart out of which 14 had entertained and were checked by the charged employee.
12. After the vigilance check, one extra fare ticket folio No.966362 was cancelled by the vigilance inspector. Thereafter 3 extra fare tickets were issued as follows:

EFT. No.	Ticket No.	No. of persons	From	To
966363	7564484	2	VSKP	RJY
966364	7564488	1	VSKP	TDD
966365	6579022 to 7569025	4	VSKP	RJY

13. Obviously the charged employee himself had written the tickets incompletely and the series were not tallying. But they were issued for 7 passengers.

With regards the first charge, the disciplinary authority held that the petitioner had allowed seven passengers, holding second class tickets, to sit in the a/c chair car without collecting railway dues with the intention of collecting the same from the passengers at their destination, misappropriate the amounts for himself and cause loss of revenue to the railways. The disciplinary authority held that it was possible to check the confirmed passengers and issue nine extra fare tickets before the train reached Anakapalle, let alone Annavaram, that being the case there was no reason why the petitioner should have waited till Annavaram without issuing extra fare tickets. The disciplinary authority noted that all but one of the extra fare tickets, which the petitioner had issued prior to the vigilance check, were for passengers bound to Vijaywada whereas all the eleven second class tickets for which he had not issued extra fare tickets were for destinations short of the last station i.e., Vijayawada. While holding that failure on the petitioner's part, in not issuing the extra fare tickets, was established beyond doubt, the disciplinary authority held that from the extra fare tickets issued prior to the vigilance check as well as the left over tickets, based on

preponderance of probabilities, it was clear that the tickets had not been issued with the malafide intention of collecting the money from the passengers when they alighted from the train and thereafter misappropriate the same. The disciplinary authority noted that the petitioner had displayed an obstructive attitude right from the inception when the charge memo was issued, that the enquiry officer had taken reasonable steps of intimating the defence witnesses to attend the enquiry and that, in any case, the enquiry officer had no police powers to arrest witnesses and produce them nor judicial powers to issue non-bailable warrants and that, if the charged employee felt that these witnesses were the key to his defence, he should have supplemented the efforts of the enquiry officer and produced the witnesses himself. The disciplinary authority held that non-cooperation of the petitioner was with a view to later claim that he had been denied reasonable opportunity and that the enquiry officer cannot be said to have been biased only because unlisted witnesses were not produced in the enquiry. The disciplinary authority agreed with the findings of the enquiry officer that both the charges were proved and, vide memo dated 25.01.1999, imposed on the petitioner the penalty of compulsory retirement from service. According to the petitioner none of his contentions were considered before the impugned order of punishment was passed.

Aggrieved thereby, the petitioner preferred an appeal to the 2nd respondent on 03.02.1999 reiterating the contentions raised by him before the disciplinary authority. In his order dated 28.09.1999 the appellate authority, after carefully going through the appeal preferred by the petitioner, the enquiry report and other relevant documents, and after giving the petitioner a personal hearing on 06.09.1999, noted that the procedure laid down had been fully complied with, that the findings of the disciplinary authority were warranted by the evidence on record and that the charges framed against the petitioner were proved in the enquiry. The appellate authority agreed with the findings of the enquiry officer and noted that the petitioner had allowed seven passengers possessing second class tickets into the a/c coach without collecting the difference in the fare prior to the vigilance check at Annavaram which showed that he had wantonly not collected the amounts with malafide intentions for his personal gain. The appellate authority held that the petitioner had failed to declare his private cash in the extra fare ticket book as per the extant rules but had only entered it in the rough journal. The appellate authority also noted that, during the personal hearing, the petitioner had not thrown any light on any new aspect and that, on perusal of his service register, it was noticed that he had a tendency of not collecting charges, difference in fares and of not issuing receipts for the amounts collected from passengers in sleeper coaches. The appellate authority held that the punishment imposed needed no modification and that it stood good. The petitioner was informed that he had a right of filing a revision against the order of the appellate authority.

According to the petitioner the appellate authority, in his order dated 28.09.1999, had mechanically rejected the appeal confirming the penalty imposed on him. Aggrieved thereby, the petitioner filed O.A. No.1888 of 1999 and the Central Administrative Tribunal, Hyderabad,

by order dated 20.07.2001, dismissed the O.A. The petitioner sought review of the order passed in O.A. No. 1888 of 1999 dated 20.07.2001 in R.A. No. 68 of 2001 and the said review application was also dismissed by order dated 16.10.2001.

Sri Shiva, learned counsel for the petitioner, would seek to have the impugned order of punishment quashed on the following grounds:

1. Material witnesses were not examined in the departmental enquiry. While the statements of two of the passengers were recorded by the vigilance Inspector, these two passengers were neither examined nor produced for cross-examination in the departmental enquiry despite a specific request by the petitioner to have them summoned. The petitioner was, thereby, denied reasonable opportunity of effectively defending himself.
2. Even though the vigilance officer was examined in the departmental enquiry, a copy of the vigilance report was not furnished to the petitioner.
3. The order of the appellate authority is cryptic and is bereft of reasons. Since none of the contentions, raised by the petitioner, were considered the order of the appellate authority suffers from non-application of mind.

Sri Shiva, learned Counsel for the petitioner, would refer to the provisions of the Departmental Enquiries Act in support of his submission that the enquiry officer was statutorily required to have the two passengers, whose statements had been recorded by the Vigilance Inspector, produced as witnesses in the departmental enquiry. According to the learned Counsel, on the petitioner's specific request to have these two passengers examined in the enquiry the enquiry officer, finding merit in the said contention, had sent an intimation calling upon them to participate in the enquiry, that on the mere ground that the summons sent to one of the passengers i.e., Sri D.G. Srinivas Raju was returned for want of correct address, the enquiry was held and completed without any further efforts being made to have them summoned as witnesses in the departmental enquiry. Learned Counsel would submit that the enquiry officer had failed to take effective steps to secure their presence either as prosecution witnesses or as defence witnesses, that if these two passengers had been summoned as prosecution witnesses, the petitioner would have had the opportunity of cross-examining them, and even if they could not be summoned as prosecution witnesses they should have been summoned as his defence witnesses, since he had requested that they be so summoned to enable him to substantiate his contention that he was not guilty of the charge.

With regards the second charge, learned Counsel would submit that since the petitioner had disclosed his private cash when he boarded the train, and had entered it in the "on and off register" maintained at Visakhapatnam station and as it was not the case of the respondents that he had on his person excess cash, the article of charge would, at best, be a mere procedural irregularity. Learned Counsel would submit that since the private cash had been entered in the register maintained in the railway station as well as in the rough journal book maintained by the petitioner, while he was travelling on the train, he could not be held

guilty of the charge and that, in any event, this procedural irregularity did not warrant imposition of such a major punishment which deprived the petitioner of his remaining years of service. Learned Counsel would place reliance on **State of U.P. Vs. Shatrughan Lal**[1]; **Hardwari Lal Vs. State of U.P.**[2] and **K. David Wilson Vs. Secretary to Government**[3].

Sri R.S. Murthy, learned Standing Counsel for the respondents, would invoke the doctrine of *Res ipsa loquitur* to contend that since the facts in the present case speak for themselves, and a mere reading of the evidence on record would reveal that the charges are established, non-examination of the passengers was of no consequence. Learned Standing Counsel would submit that the petitioner had also affixed his signature on the statements of the passengers, as recorded by the vigilance inspector, which would substantiate the evidence of the vigilance inspector regarding the statements given to him by the passengers concerned. Learned Standing Counsel would submit that, since the vigilance report was not relied upon in the departmental enquiry, failure to furnish a copy thereof was of no consequence. He would submit that the petitioner had been furnished copies of the statements of the two passengers despite which he neither chose to adduce any evidence in his defence nor did he put forth his version to controvert the evidence adduced on behalf of the department. Learned Standing Counsel would refer to Rule 22, of the Railway Servants (Discipline & Appeal) Rules, 1968, to contend that the ingredients thereof have been satisfied and, since the appellate authority's order is an order confirming the order of the disciplinary authority, it is wholly unnecessary for the appellate authority to pass an elaborate order. Learned standing counsel would submit that, in any event, the petitioner had an effective alternative remedy of filing a revision under rule 25, without exhausting which he had invoked the jurisdiction of the Tribunal. Learned standing counsel would rely on **Narinder Mohan Arya Vs. United India Insurance Co. Ltd**[4] and **Union of India Vs. K.G. Soni**[5].

Before examining the rival contentions, it is necessary to refer to the relevant rules.

Part – III of the Railway Servants (Discipline & Appeal) Rules, 1968, relates to Penalties and Disciplinary Authorities. Rule 6 thereunder reads thus:-

(6). Penalties:- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a railway servant, namely:-

Minor Penalties:-

i. Censure;

ii. Withholding of his promotion for a specified period;

iii. Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

a. withholding of the privilege; of Passes or Privilege Ticket Orders or both.

b. Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting his pension.

iv. withholding of increments of pay for a specified period with further directions as to whether on

the expiry of such period this will or will not have the effect of postponing the future increments of his pay.

Major Penalties:-

v. Same as provided for in clause (iii) (b), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

vi. Reduction to a lower time-scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;

vii. compulsory retirement;

viii. removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;

ix. dismissal from service which shall ordinarily be a disqualification from future employment under the Government or Railway Administration;

Provided that in cases of persons found guilty of any act or omission which resulted or would have ordinarily resulted in collisions of railway trains, one of the penalties specified in Clauses (viii) and (ix) shall ordinarily be imposed and in cases of passing railway signals at danger, one of the penalties specified in Clauses (v) to (ix) shall ordinarily be; imposed and where such penalty is not imposed, the reasons therefore shall be recorded in writing.

Provided further that in cases of persons found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive or reward for doing or for bearing to do any official act, one of the penalties specified in clauses (vii) or (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons thereof shall be recorded in writing.

Part IV prescribes the procedure for imposing penalties. Rule 9 and 10 prescribe:-

(9) Procedure for imposing major penalties:-

1. No order imposing any of the penalties specified in clauses (v) to (ix) of Sub rule (1) of Rule 6 shall be made except after an inquiry held, as far as may be, in the manner, provided in this rule and Rule 10, or in the manner provided by the Public Servants (Inquiries) Act, 1950 (37 of 1950), where such inquiry is held under that Act.
2. Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1950, as the case may be the Board of inquiry or other authority to inquire into the truth thereof.
3. Where a Board of Inquiry is appointed under Sub-rule (2), it shall consist of not less than two members, each of whom shall be higher in rank than the railway servant against whom the enquiry is being held and none of whom shall be subordinate to the other member or members as the case may be of such Board.
4. Where the Board of Inquiry consists of two or more than two members the senior member shall be the Presiding Officers.
5. Every decision of the Board of enquiry shall be passed by a majority of votes, and where there is an equality of votes on the finding, the finding of each member shall be incorporated in the report prepared under clause (i) of sub-rule (25).

Explanation:- Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (12) and in Sub-rule (14) to Sub-rule (25) to the inquiring authority shall be construed as a reference to the disciplinary authority.

6. Where it is proposed to hold an inquiry against a railway servant under this rule and rule 10, the disciplinary authority shall draw or cause to be drawn up:-
   i. the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
   ii. a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain:-
      a. a statement of all relevant facts including any admission or confession made by the railway servant;
      b. a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.
7. The disciplinary authority shall deliver or cause to be delivered to the railway servant a copy of the

articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the railway servant to submit a written statement of his defence within ten days, such further time as the disciplinary authority may allow.

Note: If copies of documents have not been delivered to the railway servant along with the articles of charge and if he desires to inspect the same for the preparation of his defence, he may do so within ten days from the date of receipt of the articles of charge to him and complete inspection within ten days thereafter and shall state whether he desire to be heard in person.

8. The railway servant may, for the purpose of his defence submit with the written statement of his defence a list of witnesses to be examined on his behalf.

Note: If the Railway servant applies, in writing, for the supply of copies of the statements of witnesses mentioned in the list referred to in Sub-rule (6), the disciplinary authority shall furnish him with a copy each of such statements as early as possible and in any case not later than 3 days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

9. (a)

i. On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule.

ii. Where the disciplinary authority decides to proceed with the inquiry, it may itself inquire into such of the articles of charge as are not admitted, or appoint under Sub-rule (2) a Board of inquiry or other authority for the purpose.

iii. Where all the articles of charge have been admitted by the railway servant in his written statement of defence, the disciplinary authority shall record its findings on each charge, after taking such further evidence as it may think fit and shall act in the manner laid down in Rule 10.

iv. If the disciplinary authority, after consideration of a written statement of defence, is of the opinion that the imposition of a major penalty is not necessary, it may drop the proceedings already initiated by it for the imposition of major penalty, without prejudice to its right to impose any of the minor penalties, not attracting the provisions of Sub-rule 11. Where disciplinary authority so drops the proceedings but considers it appropriate to impose any of the minor penalties, not attracting the provisions of Sub-rule 11. Where disciplinary authority so drops the proceedings but considers it appropriate to impose any of the minor penalties not attracting the provisions of Sub-rule (2) of Rule 11, it may make an order imposing such penalty and it will not be necessary to give the Railway servant any further opportunity of making representation before the penalty is imposed.

b. If no written statement is submitted by the railway servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under Sub-rule (2) an inquiring authority for the purpose and also inform the Railway servant of such appointment.

c. Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order in writing, appoint a railway or any other Government servant to the known as the “Presenting Officer” to present on its behalf the case in support of the articles of charge.

10. The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority.

i. a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

ii. a copy of the written statement of defence, if any, submitted by the railway servant;

iii. a copy of the statements of witnesses, if any, referred to in Sub-rule (6);

iv. evidence proving the delivery of the documents referred to in Sub-rule (6) to the railway servant; and

v. a copy of the order appointing the “Presenting Officer”, if any, and

vi. a copy of list of witnesses, if any, furnished by the railway servant.

11. The Railway servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the order appointing him as such, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time not exceeding ten days, as the inquiring authority may allow.

12. The inquiring authority shall, if the railway servant fails to appear within the specified time or refuses or omits to appear, require the ‘Presenting Officer’ if any, to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to later date not exceeding thirty days, after recording an order that the railway servant may for the purpose of preparing; his defence give a notice within ten days, of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in

possession of Railway Administration but not mentioned in the list referred to in Sub-rule (6).

13.

(a) The railway servant may present his case with the assistance of any other railway servant (including a railway servant on leave preparatory to retirement) employed on the same Railway Administration on which he is working. If the Railway servant is employed in the office of the Railway Board, its attached office or subordinate office, he may present his case with the assistance of any other railway servant (including a railway servant on leave preparatory to retirement) employed in the office of the Railway Board, attached office or subordinate office as the case may be, in which he is working.

(b) The Railway servant may also present his case with the assistance of a retired railway servant subject to such conditions as may be specified by the President from time to time by general or special order in this behalf.

Note:- (1) A non-gazetted railway servant may take the assistance of an official of a Railway Trade Union recognized by the Railway Administration under which the railway servant is employed, but shall not engage a legal practitioner. A Trade Union official shall not be allowed to appear in a disciplinary case before an inquiring authority unless he has worked as such in recognized Railway Trade Union for a period of at least one year continuously before he appears and subject to the condition that he takes no fees.

Note:- (2) Nomination of an assisting railway servant or an official of a recognized railway trade union shall be made within 20 days from the date of the appointment of inquiring authority and it shall not be accepted if at the time of nomination the assisting railway servant or the official of a recognized railway trade union has more than three pending disciplinary cases in which he has to assist.

14. After the nomination of the assisting railway servant or a Railway Trade Union official, and other necessary steps preliminary to the inquiry are completed, a date ordinarily not exceeding one month from the date of appointment of the inquiring authority, shall be fixed for the inquiry and the railway servant informed accordingly.

15. The inquiring authority shall, on receipt of the notice for discovery or production of documents, forward the same or copies thereof the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as maybe specified in such requisition. Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

16. On receipt of the requisition referred to in Sub-rule (15) every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority by the specified time:-

    Provided that if the authority having the custody or possession of requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the railway servant and withdraw the requisition made by it for the production or discovery of such documents.

17. On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presiding Officer, if any, and may be cross-examined by or on behalf of the railway servant. The Presiding Officer, if any, shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

18. If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer, if any, to produce evidence not included in the list given to the railway servant or may itself call for new evidence or recall and re-examine any witness and in such case the railway servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the railway servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the railway servant to produce new evidence, if it is of the

opinion that the production of such evidence is necessary in the interest of justice.

Note:- New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence shall be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

19. When the case for the disciplinary authority is closed, the railway servant shall be required to state his defence orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the railway servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any.

20. The evidence on behalf of the railway servant shall then be produced. The railway servant may examine himself, in his own behalf, if he so prefers. The witnesses produced by the railway servant shall then be examined by or on behalf of him and shall be cross-examined by or on behalf of the Presenting Officer, if any. The railway servant shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

21. The inquiring authority may, after the railway servant closes his case, and shall, if the railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the railway servant to explain any circumstances appearing in the evidence against him.

22. The inquiring authority may after the completion of the production of evidence, hear the Presenting Officer, if any, and the railway servant, or permit them to file written briefs of their respective cases, if they so desire.

23. If the railway servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry *ex-parte*.

24. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witness as herein before provided.

25. (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain:-

a. the articles of charge and the statement of the imputations of misconduct or misbehaviour;

b. the defence of the railway servant in respect of each article of charge;

c. an assessment of the evidence in respect of each article of charge;

d. the finding on each article of charge and the reasons therefor

Explanation:- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge.

Provided that the findings on such article of charge shall not be recorded unless the railway servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

ii. The inquiring authority, where it is not itself the disciplinary authority shall forward to the disciplinary authority the records of inquiry, which shall include:-

a. the report prepared by it under clause (i);
b. the written statement of defence, if any, submitted by the railway servant;
c. the oral and documentary evidence produced in the course of the inquiry;
d. written briefs, if any, filed by the Presiding Officer, if any, or the railway servant or both during the course of the inquiry; and
e. the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

(10). Action on the inquiry report:-

1. If the disciplinary authority, having regard to its own findings where it is itself the inquiring authority, or

having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence, that authority may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the railway servant such penalty as it within its competence in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority shall act in the manner as hereinafter provided.

2. The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be.
3. The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
4. If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of Sub-rule (1), and clauses (i) and (ii) of Sub-rule (2), of Rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in Rule 11, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the railway servant.

5. If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clause (v) to (ix) of Rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing such penalty on the railway servant.

Part V of the Rules relates to Appeals and Rule 22 thereunder provides for its consideration:-

22. consideration of appeal:-

1. In the case of an appeal against an order of suspension the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
2. In the case of an appeal against an order imposing any of the Penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider:-
   a. whether the procedure laid own in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
   b. whether the findings of the disciplinary authority are warranted by the evidence on the record; and
   c. whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

i. confirming, enhancing, reducing or setting aside the penalty; or

ii. remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case;

Rule 25, of the Railway Servants (Disciplinary & Appeal) Rules, 1968, provides for Revision:-

(25) Revision : - (1) Notwithstanding anything contained in these rules:-

(i) the President, or

(ii) the Railway Board, or

(iii) the General Manager of a Railway Administration or an authority of that status in the case of a railway servant serving under his control, or

(iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or

(v) any other authority not below the rank of a Deputy Head of Department in the case of a Railway servant serving under his control may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or

under the rules repealed by Rule 29 after consultation with the Commission where such consultation is necessary and may:-

(a) confirm, modify or set aside the order, or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such order as it may deem fit;

provided that :-

(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;

(b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 6 or the penalty specified in Clause (iv) of Rule 6 which falls within the scope of the provisions contained in Sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after-

(i) the expiry of the period of limitation for an appeal; or

(ii) the disposal of the appeal where any such appeal has been preferred;

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this Rule:-

(i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority, where an appeal has been preferred or, where no appeal has been preferred and the time laid down for revision by the appellate authority, has expired.

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by – (a) an appellate authority other than the President or (b) the revising authorities mentioned in item (v) of Sub-rule (1):-

After more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty, or modify the order to the detriment of the railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the railway servant.

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration, when they are higher than the appellate authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Explanation:- For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders"

It is not in dispute that a copy of the vigilance report was neither marked as an exhibit nor was it relied upon in the departmental enquiry. As such failure to furnish a copy thereof to the delinquent employee is of no consequence. The vigilance report is in the nature of a preliminary enquiry report and merely constitutes the basis for taking a decision as to whether or not disciplinary action should be initiated against the delinquent employee. It is only after such a decision is taken that disciplinary action is initiated by issuing a charge memo and, on receipt of the delinquent employee's explanation thereto, a departmental enquiry is held wherein evidence is let in to establish the charges.

In **Depot Manager v. Sri Mohd.Ismail**[6], dealing with the nature of the preliminary enquiry and the evidentiary value of the materials and information collected in such enquiry, the Division bench of this Court held-

"……..Preliminary enquiry is neither a judicial nor a quasi-judicial act; it is purely an administrative action. The purpose of holding departmental enquiry is to decide whether the disciplinary action should or should not be taken against a delinquent employee. The said enquiry results in either punishment or exoneration of the employee concerned. On the other hand, the purpose of preliminary enquiry is to find out whether there is sufficient justification for embarking on a full-fledged departmental enquiry against a particular employee. Such a preliminary enquiry does not result either in exoneration or punishment, but it merely guides the employer whether to proceed against a particular employee or not, and its purpose is to see whether a prima facie case is made out for issuing a charge-sheet calling for explanation. In other words, the purpose of preliminary enquiry is for the personal satisfaction of the Disciplinary Authority to enable him t come to a decision whether the matter should be dropped or any further action should be taken. It is also relevant to note that there is no obligation on the part of the Disciplinary Authority to disclose the materials and evidence collected in the course of the preliminary enquiry to the delinquent. There is no obligation cast on the Disciplinary Authority to disclose its finding in the preliminary enquiry. But, the satisfaction arrived at and the materials and the evidence collected in the preliminary enquiry may be a basis for initiating departmental enquiry and if the Disciplinary Authority wants to make use of the materials and evidence collected in the preliminary enquiry against the delinquent in the departmental enquiry, then, law requires that such materials and evidence should be disclosed to the delinquent and the delinquent should be given a reasonable opportunity to have his say regarding those materials……."

……A preliminary enquiry is of very informal character and the methods are likely to vary in accordance with the requirements of each case. The delinquent employees have no vested right in any form or procedure of holding preliminary enquiry. The object being the satisfaction of the officer concerned, the procedure of enquiry is wholly at the discretion of the officer holding the enquiry. After holding preliminary enquiry, the Disciplinary Authority need not record its satisfaction in writing nor is it required to give reasons for initiating the regular departmental enquiry. As already pointed out, that a preliminary enquiry does not result either in exoneration or punishment. Therefore it should be held that whatever be the finding in the preliminary enquiry, that will not affect any of the legal rights of the delinquent……."

In K. David Willson[3], a Division Bench of this Court observed:

"……..It is trite, the preliminary report was only to decide and assess whether it would be necessary to take disciplinary action against the petitioner-delinquent and it does not form any foundation for passing the order of removal against the petitioner – delinquent. …..

It is only on the basis of the evidence adduced in the enquiry that the enquiry officer, and the disciplinary authority, are required to determine as to whether or not the delinquent employee is guilty of the charges levelled against him. As the vigilance report did not form part of the enquiry proceedings, failure to furnish a copy thereof can neither be said to have caused prejudice to the petitioner nor could it be said to have vitiated the order of punishment. In **State of Assam Vs. M.K. Das**[7], the Supreme Court observed:

"……**The fact that a copy of the report of the Superintendent of Police, Anti Corruption Branch, dated December, 21, 1957 was not furnished to the respondent is, in our opinion, of no consequence in relation to the actual enquiry conducted against the respondent**. That report was necessitated in view of the complaints received against the respondent and the enquiry made by the Anti Corruption Branch was only for the purpose of enabling the Government to consider whether disciplinary proceedings should be initiated against the respondent. On receipt of the report, the Government felt that disciplinary proceedings will have to be initiated against the respondent and that is how the enquiry proceedings were commenced. **The validity of the enquiry will have to be decided only by the manner in which it has been conducted. So far as that is concerned, it is clear from the record that the respondent had a full opportunity of participating in the enquiry and adducing evidence on behalf of himself and of cross-examining the witnesses for the prosecution and the entire evidence was recorded in his presence. The non-furnishing of the copy of the report of the Superintendent of Police, Anti Corruption Branch, does not vitiate the enquiry proceedings**……."

Reliance is however placed on behalf of the petitioner on **Shatrughan Lal**[1], wherein the Supreme Court observed:-

"…….It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated

in the preliminary enquiry, and thereafter the charge-sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during the preliminary enquiry had not caused any prejudice to the respondent in defending himself……..”

I n **Shatrughan Lal**[1], copies of the statements of witnesses, examined in the preliminary enquiry, though asked for by the delinquent employee, were not supplied to him. It was in such circumstances that the Supreme Court held that the Tribunal was justified in holding that principles of natural justice was violated and that the delinquent employee was not provided an effective opportunity of hearing more particularly as it was not established that non-supply of copies of statements recorded during the preliminary enquiry had not caused any prejudice to the delinquent employee in defending himself.

While the submission of Sri R.S. Murthy, learned Standing Counsel, that the burden to establish prejudice is on the delinquent employee, that the burden cannot be shifted on to the department in view of the law laid down by the Supreme Court in **Managing Director ECIL, Hyderabad Vs. B. Karunakar**[8], and **State Bank of Patiala Vs. S.K. Sharma**[9], and that the ratio in **Shatrughan Lal**[1], runs contrary to these two binding pronouncements of the Supreme Court, cannot be said to be without merit, it is not necessary for us to examine this question as in the present case copies of the statements of witnesses, examined during the vigilance enquiry, were in fact furnished to the petitioner and he does not have any complaint in this regard. It is his case that a copy of the vigilance report was not furnished to him. Since the question, as to whether failure to furnish a copy of the vigilance report, though not relied upon in the departmental enquiry, would vitiate the order of punishment, did not arise for consideration therein, the judgment of the Supreme Court in **Shatrughan Lal**[1] is no assistance to the petitioner.

Now the question with regards failure to examine the two passengers, (whose statements were recorded by the Vigilance Inspector), as witnesses in the departmental enquiry. It is well settled that the enquiry officer, holding a domestic enquiry, cannot take any effective steps to compel attendance of witnesses and consequently cannot be said to have caused any procedural irregularity in not causing their production. (**Tata Oil Mills Company Ltd. Vs. The Workmen**[10]; **Shambunath Goyal Vs. Bank of Baroda**[11]). The enquiry officer has no power as a court to summon witnesses. Just as the employer produces its witnesses, the delinquent employee has to take steps to produce his witnesses. The enquiry officer has neither the power to produce nor compel the employer to produce witnesses for being cross-examined by the employee. (**Tata Engineering & Locomotive Company Ltd. Vs. S.C. Prasad**[12]). Nothing prevented the petitioner from producing the two passengers as witnesses in his defence. The mere fact that the two passengers were not examined as witnesses cannot, automatically, lead to the conclusion that the enquiry proceedings are vitiated.

The charges levelled against the delinquent employee are required to be established on the basis of the oral and documentary evidence adduced in the departmental enquiry and, as long as the evidence on record is sufficient to establish the charges, non-examination of certain witnesses, even the complainant, does not vitiate either the departmental enquiry held against the delinquent employee or the punishment imposed on him.

The Railway Servants (Discipline & Appeal) Rules, 1968, does not confer on the enquiry officer any power to compel attendance of witnesses. Since Sri Shiva, learned Counsel for the petitioner, would place reliance on Section 5 of the Departmental Enquiries Act, it is necessary to refer to Sections 4 and 5 thereof:-

Powers of Central Government to authorize the exercise of powers specified in Section 5

4(1) Where the Central Government is of opinion that for the purposes of any departmental inquiry it is necessary to summon as witnesses, or call for any document from any class or category of persons, it may, by notification in the Official Gazette, authorize the inquiring authority to exercise the power specified in Section 5 in relation to any person within such class or category and thereupon the inquiring authority may exercise such power at any stage of the departmental inquiry.

(2) The power conferred on the Central Government by sub-section (1) may also be exercised by such authority, not being an authority inferior to the appointing authority in relation to the person against whom the departmental inquiry is being held, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Power of authorized inquiring authority to enforce attendance of witnesses and production of documents.

5(1) Every inquiring authority authorized under Section 4 (hereafter referred to as the "authorized inquiring authority") shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) requiring the discovery and production of any document or other material which is producible as evidence;

(c) the requisitioning of any public record from any Court or Office.

(2) Notwithstanding anything contained in sub-section (1), the authorized inquiring authority shall not compel the Reserve Bank of India, the State Bank of India, any Subsidiary Bank as defined in Clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) ; or any corresponding new Bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970)-

(a) to produce any books of account or other documents which the Reserve Bank of India, the State Bank of India, the Subsidiary Bank or the corresponding new Bank claim to be of as confidential nature; or

(b) to make any such books or documents a part of the record of the proceedings of the departmental inquiry; or

(c) to give inspection of any such books or documents, if produced, to any party before it or to any other person.

(3) Every process issued by an authorized inquiring authority for the attendance of any witness or for the production of any document shall be served and executed through the District Judge within the local limits of whose jurisdiction the witness or other person, on whom the process is to be served or executed, voluntarily resides or carried on business or personally works for gain and for the purpose of taking any action for the disobedience of any such process, every such process shall be deemed to be a process issued by the District Judge.

(4) Every authorized inquiring authority making any departmental inquiry under this Act shall be deemed to be a Civil Court for the purposes of Sections 480 and 482 of the Code of Civil Procedure, 1898.

While Section 5(1)(a) confers similar powers, on an enquiry authority, as are vested in a Civil Court under the Civil Procedure Code while trying a suit in respect of summoning and enforcing attendance of any witness and examining him on oath, the said section applies only to such of those enquiry authorities who are so authorized under Section 4 of the Departmental Enquiries Act. Section 4(1) provides that where the Central Government is of the opinion that, for the purposes of any departmental enquiry, it is necessary to summon

witnesses it may, by notification in the official gazette, authorise the enquiring authority to exercise the powers specified in Section 5. It is not even the case of the petitioner herein that such a notification has been issued by the Central Government, (let alone its being published in the official gazette), conferring powers under Section 5 of the Act on the enquiring authorities of the Railways. To a specific query from this Court, Sri R.S. Murthy, learned Standing Counsel, would submit that no such notification has been issued by the Central Government making the provisions of Section 5 of the Departmental Enquiries Act applicable to the Railways. In the absence of any notification being issued under Section 4, Section 5 has no application. It cannot, therefore, be said that the enquiry authority, in the present case, had the power of a Civil Court to summon the two passengers, whose statements were recorded by the vigilance inspector and whom the delinquent employee requested to be summoned, in the departmental enquiry, as his defence witnesses.

Sri Shiva, learned Counsel for the petitioner, would submit that the enquiry officer had himself considered it important to accede to the petitioner's request that these two passengers be summoned as his defence witnesses and had intimated them by post. Learned Counsel would submit that, on the mere ground that the address to which intimation was sent was not found correct, the departmental enquiry was hastily proceeded with, without these two passengers being examined. According to the learned Counsel, one more attempt should have been made to have the witness summoned, more so when the prosecution had been given several adjournments when evidence was being adduced, in the enquiry, on their behalf. As noted above, no legal duty is cast on the enquiry officer nor is he obligated under the rules to have these two passengers summoned as defence witnesses. The mere fact that the enquiry officer had made some attempts in this regard is of no consequence, since it was for the delinquent employee, if he so desired, to produce these witnesses in his defence and not for the enquiry officer to do so.

The Vigilance Inspector, to whom these two passengers had been given their statements, was examined as P.W-1 in the departmental enquiry. The statement of these two passengers were recorded by the vigilance inspector in the presence of the petitioner who had affixed his signature, on the said statements, in acknowledgement thereof. The petitioner was well aware of the contents of the statements of these two passengers. Not only was no evidence to the contrary adduced by the petitioner, in the departmental enquiry, he also chose not to answer the questions put to him by the enquiry officer during general examination as prescribed under Rule 9(21). The petitioner chose not even to submit his written brief which he was entitled to under Rule 9(22). Having failed to avail the several opportunities afforded to him, it is not open for the petitioner to contend that non-examination of these two passengers had resulted in his being denied the opportunity of examining/cross-examining them and that the order of punishment is vitiated on this ground.

It is well settled that failure to examine witnesses, who had either given a complaint or whose statements had been recorded in the preliminary enquiry, would not vitiate either the

departmental enquiry or the punishment imposed as long as the evidence adduced in the enquiry is sufficient to establish the charges levelled against the delinquent employee. In this context reference can usefully be made to the judgments of the Supreme Court in **The East India Hotels Vs. Their Workmen**[13], **State of Haryana Vs. Rattan Singh**[14] and **J.D. Jain Vs. State Bank of India**[15]).

In **East India Hotels**[13], Hindustan Motors Limited had hosted a cocktail party for about fifty to sixty of its members in the banquet room of the Oberoi Grand Hotel at Calcutta. Sri J. Suleman, one of the workmen employed by the hotel, was deputed to look after the work of the barman to attend on the party. One of the hosts of the party, Sri B.S. Sethi, found the said workman pouring whisky into an empty gingerale bottle and when he was asked as to why he was doing so, the workman started pouring the whisky into the tub. After half the contents of the bottle was poured into the tub, Sri Sethi took the bottle from his hand, called on Sri Pyare Lal the Steward who was on duty and complained to him. Even while Sethi was complaining, the workman took the bottle from Sethi, in the presence of Sri Pyare Lal, and started pouring the contents into the tub. The Manager Sri Mittal was called but was not found. Thereafter one Sri Agarwal came along with Pyare Lal and the bottle was taken into custody and was sealed in the presence of the workman who, when asked to sign the sealed bottle, refused to do so. The gingerale bottle was sent for chemical analysis and its contents were found to be whisky. Sri Sethi then made a written complaint to the management of the hotel. On receipt of the complaint, the workman was issued a charge-memo for major misconduct. In the enquiry, Sri Agarwal, Sri Pyare Lal and two others were examined on behalf of the employer in the presence of the workman. However Sri Sethi, the complainant, was not examined. The workman was held guilty of the charges and was dismissed from service. Before the Industrial Tribunal, a contention was raised that the complainant was not examined. The Industrial Tribunal held that the witnesses who were examined in the enquiry were not present at the time of occurrence of the incident and were not competent to state as to what had actually happened and they had simply stated what they had heard from Mr Sethi and this sort of evidence was insufficient to prove the charge alleged against the workman. The order of dismissal passed by the company was set aside by the Tribunal. When the matter was carried in appeal, a three member bench of the Supreme Court observed:

"....It is not necessary that Sethi should have given evidence. His absence may be due to the fact that it was now for the employer to take action on his complaint and to protect their prestige and reputation which was mainly their affair. It is, however, apparent from the evidence that Sethi had complained to Pyare Lal and Pyare Lal speaks to what the respondent did and what happened in his presence. He said even when he asked the respondent what was in the bottle the respondent replied that it contained 'Nimboo Pani' and that he was pouring the contents in the tub. Bakshi also found whisky in the gingerale bottle. He says that Agrawal was tasting something when he came. The bottle was sealed by him in the presence of Sethi, Agrawal and Pyare Lal. Agrawal also gave evidence and so did Lal Singh. When the respondent was asked to sign the envelope he refused to do so and when he was asked by Lal Singh why he was refusing to do so, his reply was "Hum Jab esme sign karenge tob mar jayenge". The respondent did not challenge this statement also. **As the enquiry and the dismissal do not suffer from any defect and there is evidence from which the impugned conclusions can be drawn, we set aside**

the award of the Tribunal and substitute instead the finding that the dismissal of the respondent was justified……." (emphasis supplied)

In **Rattan Singh**[14], the respondent was a conductor in a bus which was subjected to a vigilance check. On inspection, the vigilance squad found that four passengers had alighted without tickets and that eleven passengers traveling in the bus did not have tickets although they claimed to have paid the fares. On the basis of the report submitted by the flying squad, a charge sheet was issued, a domestic enquiry held and on his guilt being established, the services of the respondent-conductor was terminated. The Civil Court held the order of termination to be a nullity and declared that he was entitled to be continued in service. The appellate Court affirmed the order of the trial Court and the second appeal was dismissed by the High Court. All the Courts had declared the termination to be bad as none of the eleven passengers had been examined in the domestic enquiry and there were departmental instructions that the checking Inspectors should record the statements of the passengers which was not done in this case. The explanation of the State was that the Inspector of the flying squad had stated that the passengers had informed that they had paid the fares, but had declined to give written statements. On the State of Haryana approaching the Supreme Court, by way of special leave, a three judge bench of the Supreme Court observed:

"……. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor textbooks, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. **However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence – not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, in some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.**

Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. **In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid.** Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal……"(emphasis supplied)

In **J.D. Jain**[15], the appellant was working as a cashier with the State Bank of India.

One Sri D.P. Kansal, who had a savings bank account with the bank, came to receive his passbook. On receipt of the passbook from the counter clerk, Sri Kansal complained to Sri Wadhera, the Ledger-Keeper that on February 8, 1971, he had withdrawn only Rs.500.00 (Rupees five hundred only), but a debit entry of Rs.1,500.00 (Rupees fifteen hundred only) had been shown in the passbook. Sri Wadhera took Sri Kansal to the supervisor Sri R.P. Gupta before whom Sri Kansal repeated the complaint. The documents were examined and it was found that Sri Kansal had given a 'letter of authority' to the appellant Sri J.D. Jain authorizing him to withdraw the amount from his account. The letter of authority showed that it was a withdrawal of Rs.1,500.00 (Rupees fifteen hundred only) though there appeared to be some interpolation suggesting that the figure of Rs.500.00 had been altered to the figure of Rs.1,500.00. The matter was brought to the notice of Sri M. Ramzan, the Agent of the bank, before whom also Sri Kansal repeated his complaint. Eventually, a charge memo was issued to the appellant alleging that he had altered, in his own handwriting, the figures of Rs.500.00 in the letter of authority to Rs.1,500.00 and had received Rs.1,000.00 in excess passing only Rs.500.00 to the passbook holder and that he had subsequently, on 24-06-1971, deposited Rs.250.00 (Rupees Two Hundred and Fifty only) in the account of Sri Kansal to liquidate a part of the amount misappropriated by him. Since the appellant denied the charges an enquiry officer was appointed and, on the appellant being found guilty, the disciplinary authority discharged him from service. The appellant raised a dispute and the Tribunal held that, on the evidence before it, the appellant could not be held guilty in the absence of the evidence of Sri Kansal and that the evidence recorded in the enquiry was hearsay. The Tribunal directed reinstatement of the appellant with full back wages. Aggrieved thereby, the bank moved the High Court and the High Court, while holding the charges against the appellant to have been established, quashed the award of the Tribunal. When the matter was carried in appeal, a three member bench of the Supreme Court observed:

"…….In an application for a Writ of Certiorari under Art. 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. In the case before us, according to the Tribunal as Kansal was not examined, the evidence before it was hearsay and as such on the basis thereof the appellant could not be legally found guilty.

In the instant case, the alleged misconduct of the appellant was that he forged documents, withdrew Rs. 1,500.00 - Rs. 1,000.00 in excess of the amount he was authorised to do and misappropriated the excess amount of Rs. 1,000,00. With regard to the fact whether the appellant manipulated the documents withdrew excess amount and misappropriated it, there is, of course, no direct evidence of any eye-witness except the appellant's 'confession' referred to above. **The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence, namely, the authority letter containing the admitted interpolations by the appellant in his own handwriting in different ink, and the addition of the digit "1" before 500. The evidence of Kansal would have been primary and material, if the fact in issue were whether Kansal authorised the appellant to make the alterations in the authority letter. But Kansal's complaint was to the contrary. For the purpose of a departmental enquiry complaint, certainly not frivolous, but substantiated by circumstantial evidence, is enough. What the respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to the withdrawal of excess money by the appellant in presence of the four witnesses, namely, Wadhera, Gupta, Ramzan and Sarkar, aforesaid against his advice. On the complaint of Kansal, the evidence of these four witnesses is direct as the complaint is said to have been made by Kansal in their presence and hearing; it is, therefore, not hearsay. As the respondent has succeeded in proving that a complaint was made by Kansal on the evidence of the above-**

named four witnesses, the respondent has succeeded. No rule of law enjoins that a complaint has to be in writing as insisted by the Tribunal……." (emphasis supplied).

None of the aforesaid judgments of three judge benches of the Supreme Court was noticed by the two member bench in **Hardwari Lal[2].** In **Hardwari Lal[2]**, the allegation against the appellant, a police constable, was that on the night of 16/17th January 1991, being under the influence of liquor, he had hurled abuses in the police station at another constable. Based on a complaint by the constable Sri Prakash Chandra Pandey to the Sub-Inspector Sri Virender Singh informing that the said incident had been witnessed by another constable Sri Jagdish Ram, an enquiry was instituted and on receipt of the enquiry report, the disciplinary authority passed an order of dismissal. A challenge to the order of dismissal was rejected by the Tribunal and the Writ Petition filed thereagainst before the High Court was also dismissed. Before the Supreme Court, it was contended that since the complainant, Sri Virender Singh and Sri Jagdish Ram were not examined in the enquiry, it amounted to non-observance of principles of natural justice. The Supreme Court held:

"……Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. **Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material.** In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

However, Shri Goel, the learned Additional Advocate General, State of Uttar Pradesh has submitted that there was other material which was sufficient to come to the conclusion one way or the other and he has taken us through the same. But while appreciating the evidence on record the impact of the testimony of the complainant cannot be visualized. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebriation, if any, of the appellant.

In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service……" (emphasis supplied)

The judgments in **East India Hotels[13]**, **Rattan Singh[14]** and **J.D. Jain[15]** are all three judge bench judgments of the Supreme Court. As the two judge bench in **Hardwari Lal[2]**, had failed to notice any of the aforesaid earlier judgments of three judge benches it is the law laid down by the three judge bench of the Supreme Court which is binding on the High Courts.

In **Mattulal Vs. Radhelal**[16], the Supreme Court, noticing the contrary views taken by a Bench of four judges of the Supreme Court in **T. B. Sarvate Vs. Nemichand**[17] and **Smt. Kamla Soni Vs. Rup Lal Mehara**[18], a Bench of three judges, held that since the earlier judgment of a Bench of four Judges of the Supreme Court in **T.B. Sarvate[17]** was not

noticed by the subsequent three Judge Bench of the Supreme Court in **Smt. Kamla Soni**[18], the decision in **T.B. Sarvate**[17] must be followed as against the decision in **Smt. Kamla Soni**[18] as the former was a decision of a larger bench.

In **State of U.P. Vs. Ram Chandra Trivedi**[19], the Supreme Court observed:

".....It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in Union of India v. K. S. Subramanian (Civil Appeal No. 212 of 1975, decided on July, 30, 1976)* to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself....."

In **Union of Indis Vs**. **Raghubir Singh**[20], the Constitution Bench of the Supreme Court held:

".... What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to' guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges....."

"..... We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court....."

Following the judgment in **Raghubir Singh**[20], the Supreme Court in **Chandra Prakash Vs. State of U.P.,**[21] observed:-

".....A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of *Raghubir Singh* held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges....."

.....In view of the authoritative pronouncement of the Supreme Court in the aforesaid cases, the pronouncement of law by a Division Bench of the Supreme Court is binding on a Division of the same or smaller number of judges. In cases where the High Court finds any conflict in the views expressed by larger and smaller benches of Supreme Court, it cannot disregard the views expressed by the larger bench of the Supreme Court and must follow the law laid down therein and not what has been laid down by a Division Bench consisting of lesser number of judges....."

In view of the law laid down by the Supreme Court in **East India Hotels**[13], **RattanSingh**[14] and **J.D. Jain**[15], the plea of non-examination of the two passengers in the departmental enquiry vitiating both the enquiry proceedings and the order of punishment must be rejected.

In **The Divisional Manager United India Insurance Co. Ltd Vs. Thotapalli Radhakrishna Murthy**[22] the respondent was an Inspector with United India Insurance Company Limited. He was charged of submitting false hospital claims for a sum of Rs.925/- towards medicines, drugs and charges incurred for the treatment of his wife for a period of one month in a private nursing home. The allegation levelled against the respondent was that the said bill was not true, that his wife had never undergone any treatment in the said clinic and that the claim was put forth only with a view to defraud the company. After the respondent submitted the bill, M.Ws. 1 to 4 i.e, M.W-I the private secretary, M.W-2, the Assistant Regional Manager, M.W-3, the Assistant in the Divisional Office and M.W-4 the Divisional Manager, wanted to verify the correctness of the bills submitted by the respondent. M.W.3 met the doctor who admitted that it was not a true certificate whereupon, M.W.4 accompanied by M.W.3 again went to the doctor who reported the falsity of the certificate and made an endorsement on the obverse of the certificate that "the bill was withdrawn". Thereafter, they confronted the respondent with the said endorsement who admitted his guilt and gave his statement in writing on the same day. On the ground that the doctor, who made the endorsement on the medical certificate, was not examined, the writ petition was allowed. The learned Single Judge rejected the argument that the doctor was not available in India at the time of enquiry, and was in the USA, and observed that the said ground was not an answer or a panacea for the said "fatal infirmity of non-examination of the doctor". In this context, the Division bench of this Court observed:-

"……..may be the doctor's evidence was material may be his evidence was important; but, that is a question touching upon the adequacy of the evidence, which this Court cannot go into under Art. 226 of the Constitution. This Court can interfere if there is no evidence in support of the charges, or in a case where the finding or the conclusion is such that no reasonable person would have arrived at it, to wit, perverse; but the this Court cannot sit as an appellate authority and weigh the evidence. Moreover, it cannot also be said that it was a case of deliberate suppression of material evidence. The doctor was not available in India and summoning him from United States for giving evidence at the enquiry would have meant inordinate cost to the Company. Another fact to be remembered in this behalf is that, the Evidence Act does not apply to these enquiries. The only obligation of the Enquiry Officer is to conduct the enquiry in accordance with the principles of natural justice, which means, in a fair manner…….. The evidence of the Company officials in whose presence the doctor made the endorsement, cannot be said to be hearsay. M.Ws.3 and 4 have deposed that the doctor made the said endorsement on the obverse of the certificate/bill in their presence. For these reasons' we must hold that the enquiry is not vitiated by non-examination of the doctor……." (emphasis supplied)

The contention that failure on the part of the prosecution to examine these two passengers, who were material witnesses, would vitiate the enquiry proceedings and the order of punishment, does not, therefore, merit acceptance.

In **K. David Wilson**[3], certain charges were leveled against a Sub Judge alleging that he had disposed of a Land Acquisition Original Petition enhancing the compensation. Sri G.

Satyanarayana Raju and ten others, claiming to be the residents of Tedepalligudem, sent a petition to the District Judge, West Godavari alleging that the petitioner was a corrupt officer and that he had awarded heavy compensation to the claimants in the O.P. Based on the complaint, a preliminary enquiry was held and thereafter a regular enquiry was ordered. In the enquiry, while Sri K. Gangadhara Rao, Stenographer was examined, none of the claimants or their advocates or the Assistant Government Pleader who appeared for the State Government were examined on behalf of the disciplinary authority. The Enquiry Officer held that the charges were not proved. On receipt of the enquiry report, the High Court disagreed with the findings and issued a notice calling upon the petitioner to show cause why the findings of the enquiry officer should not be disagreed with and why the second charge should not be held to be proved. The petitioner submitted his reply and thereafter the High Court passed final orders dated 01-12-1993 removing him from service. On the ground that the order of punishment could have been passed only by the Governor and not by the High Court, the order was set aside by the Supreme Court. Subsequently the Governor, on the basis of the recommendations of the High Court, removed the petitioner from service. Aggrieved thereby, the petitioner approached this Court, under Article 226 of the Constitution of India, and the Division bench observed:

"…….The enquiry conducted against the petitioner also suffers from another serious procedural flaw. **The statement of the stenographer recorded by the learned District Judge, West Godavari District in the course of preliminary enquiry was treated as substantive evidence in the regular enquiry without examining the stenographer and marking the statement given by him in the preliminary enquiry and without giving any opportunity to the petitioner to cross-examine the stenographer. This procedure adopted by the Enquiry Officer is clearly objectionable and in violation of principles of natural justice.**

It is well settled that the disciplinary authority cannot make use of any material or evidence collected by it in the course of preliminary enquiry against the delinquent official unless those materials and evidence are produced and proved in accordance with law in the regular departmental enquiry and the delinquent employee is given a fair opportunity to meet those adverse materials and evidence. In the instant case this well settled rule governing departmental enquiry is completely breached. On that count also, the departmental enquiry conducted against the petitioner is vitiated……" (emphasis supplied).

Unlike **K. David Wilson**[3], in the case on hand the Vigilance Inspector, (before whom the passengers had given their statements, that too in the presence of the petitioner), was examined in the departmental enquiry as P.W-1 and was also subjected to cross-examination by the petitioner.

The facts in the present case speak for themselves. The petitioner was the TTE for the two a/c chair car coaches of Ratnachal Express from Visakhapatnam to Vijayawada. The vigilance inspector conducted the check at Annavaram, a running distance of nearly two hours from Visakhapatnam. The reservation chart, marked as an exhibit in the enquiry proceedings, showed that while one of the two a/c chair cars was empty, the other had around 15 passengers. Among the 15 confirmed passengers, 14 had boarded the train. Sri D.G. Srinivasa Raju, one of the two passengers who gave their statements to the vigilance inspector in the petitioner's presence, stated that all four of his group had boarded the train at Visakhapatnam. There was only one halt between Visakhapatnam and Annavaram at

Anakapalle. While the computer chart showed that one Coach was fully vacant, the vigilance inspector deposed that there were passengers sitting in both the a/c coaches. Prior to the vigilance check six passengers, and after the vigilance check seven passengers, were issued extra fare tickets. The very fact that, for nearly two hours, none of the seven passengers, found sitting in the a/c coach without an a/c ticket, were issued extra fare tickets would itself show that the petitioner intended to wait for the destination station of these passengers before collecting the fares due from them without having to issue the extra fare tickets. The doctrine of *Res ipsa loquitur* applies and the burden of proof was on the petitioner to establish that his failure to issue extra fare tickets to these seven passengers was for bonafide reasons.

I n **Cholan Roadways Ltd. v. G. Thirugnanasambandam**[23], the Supreme Court observed:-

"……..Res ipsa loquitur is a well-known principle which is applicable in the instant case. Once the said doctrine is found to be applicable the burden of proof would shift on the delinquent. As noticed hereinabove, the enquiry officer has categorically rejected the defence of the respondent that the bus was being driven at a slow speed.

In *A.T. Mane: (2005(3) SCC 254)* this Bench observed: (SCC p. 257, paras 5-6)

. …Learned counsel relied on a judgment of this Court in support of this contention of his in the case of *Karnataka SRTC* v. *B.S. Hullikatti: (2001)2 SCC 574*. That was also a case where a conductor concerned had committed similar misconduct 36 times prior to the time he was found guilty and bearing that fact in mind this Court held thus:- (SCC p. 576, para 5)

"……Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his is bound to result in financial loss to the appellant Corporation.

On the above basis, the Court came to the conclusion that the order of dismissal should have been set aside. In our opinion, the facts of the above case and the law laid down therein apply to the facts of the present case also.

Furthermore, in a case involving accident it is not essential to examine the passengers of the bus. In *State of Haryana* v. *Rattan Singh: (1977(2) SCC 491)* this Court observed: (SCC pp. 493-94, para 5)

"…….Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductors testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal".

While the petitioner, during cross-examination of P.W-1, suggested that there was some trouble in the pantry car which resulted in his failure to issue the extra fare tickets, the vigilance inspector, in reply, denied any such incident having been brought to his notice during the vigilance check. The vigilance inspector stated that none of the passengers had informed him of any altercation between them and the pantry car staff nor did the petitioner inform him of this alleged incident when the vigilance check was conducted. It was for the petitioner to have produced necessary evidence to establish that he was prevented from issuing the extra fare tickets for unavoidable reasons. Though the burden was on him, the petitioner neither examined himself nor produced any witnesses in his defence. The petitioner chose not to subject himself to the general examination of the enquiry officer and

did not submit his written brief on completion of the enquiry despite being given an opportunity to do so.

The first charge held establish against the petitioner is grave and serious. It is therefore not necessary for this Court to examine the petitioner's contention with regards the second charge, as the punishment of compulsory retirement from service is justified on the first charge itself. (**State of Orissa Vs. Bidyabhushan Mohapatra**[24], **Niranjan Singh Vs. Railway Board**[25] and **Pyarelal Sharma v. Managing Director, J & K Industries Ltd**[26]).

In **K.G. Soni**[5], the Supreme Court observed:-

".....The common thread running through in all these decisions is that the court should not interfere with the administrators decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case*3 the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed....."

With regards the petitioner's contention that the appellate order is bereft of reasons, it is required to be noticed that Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 requires the appellate authority to consider (a) whether the procedure laid down in the rules has been complied with, (b) whether the findings of the disciplinary authority are warranted by the evidence on record and (c) whether the penalty imposed is adequate, inadequate or severe. All these three requirements are satisfied by the order of the appellate authority. It is well settled that the appellate authority, in cases where the order of the disciplinary authority is confirmed, is not required to pass an elaborate order and it would suffice if the order reflects application of mind. (**State of Madras Vs. A.R. Srinivasan**[27], **S.N. Mukherjee Vs. Union of India**[28]**; Maharashtra State Board of Secondary Education Vs. K.S. Gandhi**[29] and **State Bank of India Vs. S.S. Koshal**[30]).

In **Narinder Mohan Arya**[4], the Supreme Court observed:-

"**.....THE appellate authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule 2 of Rule 37 of the Rules. ……..**

…..AN appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.....(emphasis supplied)

It cannot also be laid down as a general rule that an order is a non-speaking order simply because it is brief and not elaborate. (**Tarachand Khatri Vs. Municipal Corporation of Delhi**[31]).

In the case on hand, the order of the appellate order is a speaking order. Since we are

of the view that the orders of the Tribunal, both in O.A. No. 1888 of 1999 dated 20.07.2001 and R.A. No. 68 of 2001 dated 16.10.2001, dismissing the applications filed challenging the order of punishment of removal from service imposed on the petitioner, does not warrant interference in proceedings under Article 226 of the Constitution of India, it is not necessary for us to consider as to whether the remedy of a revision, under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968, is an effective alternative remedy requiring the Tribunal, under Section 20 of the Administrative Tribunals Act, and this Court, under Article 226 of the Constitution of India, to refrain from exercising discretion. Suffice to state that the question, whether the remedy of a revision can be equated to an appeal, under Section 20 of the Administrative Tribunal Act, which would bar the Tribunal from exercising its jurisdiction is left open for examination in an appropriate case.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

_____

B.PRAKASH RAO,J

Date: -12-2006

_____

RAMESH RANGANATHAN,J

Note: L.R. copy to be marked.

B/o

MRKR/ASP

[1] AIR 1998 SC 3038

[2] (1999)8 SCC 582

[3] (2001) 5 ALD 406

[4] 2006 WCC (L&S) 840

[5] (2006) 6 SCC 794
[6] 1996(4)ALD 749
[7] AIR 1970 SC 1255
[8] 1993(4) SCC 727
[9] 1996(3) SCC 364
[10] AIR 1965 SC 155
[11] AIR 1984 SC 289
[12] 1969 (3) SCC 372
[13] AIR 1974 SC 696
[14] 1977(2) SCC 491
[15] AIR 1982 SC 673
[16] AIR 1974 SC 1596
[17] 1966 MPLJ 26
[18] AIR 1969 NSC 186
[19] AIR 1976 SC 2547
[20] AIR 1989 SC 1933
[21] 2002(4) SCC 234
[22] 1985(2) APLJ Short notes page 13 (judgment in W.A.909 of 1982 dated 18.12.1984)
[23] (2005) 3 SCC 241
[24] AIR 1963 SC 779
[25] AIR 1969 SC 966
[26] AIR 1989 SC 1854
[27] AIR 1966 SC 1827
[28] 1990(4) SCC 594
[29] 1991(2) SCC 716
[30] 1994 Suppl.(2) SCC 468
[31] 1977(1) SCC 472